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10/784,092	02/20/2004	Jennipher Grudzien	GBN-110-C	6907
22825	7590	06/18/2009	EXAMINER	
WILLIAM M HANLON, JR			LEVKOVICH, NATALIA A	
YOUNG & BASILE, PC				
3001 WEST BIG BEAVER ROAD			ART UNIT	PAPER NUMBER
SUITE 624			1797	
TROY, MI 48084-3107				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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In re Application of
Jennipher Grudzien et al.
Serial No. 10/784,092
Filed February 20, 2004

DECISION
ON
PETITION

For: REACTION SURFACE ARRAY DIAGNOSTIC APPARATUS

This is a decision on the PETITION UNDER 37 CFR 1.181 TO WITHDRAW THE FINALITY filed June 04, 2009 of the Office Action mailed February 03, 2009.

On July 09, 2008, a first office action was mailed to applicants, containing various grounds of rejection. Applicants responded to this office action with a response filed on November 10, 2008. A final rejection was then mailed February 03, 2009 with a 112 first paragraph rejection lacking written description of the claimed subject matter, "new matter. Applicant responded with an after final amendment under 37 CFR 1.116 in which the "new matter" was cancelled from the claims. The examiner then mailed an advisory action on May 27, 2009 indicating wherein in the amendment after final would be entered upon filing an appeal and the original rejections of the July 09, 2008 action would be reinstated.

On June 04, 2009 a petition under 37 CFR 1.181 was timely filed to formally request the withdrawal of finality of the February 03, 2009 office action.

Petitioner's position for the withdrawal of the finality is that the examiner intends to raise new rejections on Appeal which were not raised in the final office action.

DECISION

Section 706.07(a) of the MPEP states:

706.07(a) Final Rejection, When Proper on Second Action

Due to the change in practice as affecting final rejections, older decisions on questions of prematurity of final rejection or admission of subsequent amendments do not necessarily reflect present practice.

Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p)..

Petitioner argues that the examiner is attempting to include rejections in the final office action which do not appear in the final office action. Petitioner further argues that the applicants have not received an opinion as to the affect applicant's claimed amendments and arguments submitted November 10, 2008 on the art rejections raised in the non-final Office action of July 09, 2008.

In response, it is clear that the examiner has followed proper procedure. It appears on its face that applicants' arguments and amendments of November 10, 2008 were considered by the examiner and the examiner issued a Final office action wherein no prior art rejections were made but only 112 rejections in response to such amendments. Thus the FINAL office action of February 03, 2009 was proper as necessitated by amendment. Applicant in response in the after final amendment filed May 07, 2009 overcame the 112 paragraph rejections and the examiner indicated that such would be entered upon appeal. The examiner also indicated that the original prior art rejections would be reinstated upon filing of appeal. The current appeal process permits new grounds of rejection within an examiner's answer, see MPEP 1207.03. Thus, it would be proper to introduce or reinstate the prior art rejections at such time as such would be in direct response to entering applicant's amendment filed May 07, 2009.

Accordingly, the petition for withdrawal of finality is DISMISSED.

It is also noted that upon entry of a new grounds of rejection in an examiner's answer, applicant has recourse to either maintain the appeal or reopen prosecution, see MPEP 1207.03 V.

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